

**REMARKS**

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-14 are pending in this application. Claims 1-11 are amended for clarification and 112 issues and not to overcome the cited art of record. No claims have been cancelled or added. Claims 11-14 have been withdrawn from consideration. Claims 1 and 11 are the independent claims.

Applicants note with appreciation the Examiner's acknowledgement that certified copies of all priority documents have been received by the U.S.P.T.O. Action, summary at 12.

Applicants also respectfully note that the present action does not indicate that the drawings have been accepted by the Examiner. Applicants respectfully request that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicants may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

**Information Disclosure Statement**

The Examiner states that Applicant's IDSs respectively filed February 11 and April 5, 2005 are acknowledged, have been made of record, have been considered and duly initialed PTO forms 1449 or equivalent are enclosed with the instant Office Action. However, Applicants note that the JP 60-183099 reference and the International Search Report listed in and enclosed with the April 5, 2005 IDS were crossed out as not being considered. Applicant's representative, Erin G. Hoffman, Reg. No. 57,752, spoke with Examiner Srivastava on January 13, 2010 to inquire why the references weren't considered. Even though some of the information that

Examiner Srivastava requested is not required for consideration of the references, i.e., classification of JP reference, (see MPEP 609 “each foreign patent or published foreign patent application listed in an information disclosure statement must be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application”), Applicants have enclosed a supplemental PTO-1449 form with additional information and courtesy copies of the JP 60-183099 reference and the International Search Report in order to ensure that the references are considered. Therefore, Applicants respectfully request that the next U.S.P.T.O. communication include an initialed copy of the attached PTO-1449 form indicating that the JP 60-183099 reference and the International Search Report have been considered.

#### **Specification and Claim Objections**

The specification has been objected to for allegedly not citing proper application priority data. Applicants have amended the specification by the present amendment to include the required foreign priority data. Therefore, withdrawal of the objection to the specification is respectfully requested.

Claims 1-2 and 8 have been objected to for containing the abbreviation “TS”, which the Examiner states renders the subject claims vague and unclear. Applicants have amended claims 1-2, 8 and withdrawn claim 11 to recite “total solids (TS)”. Therefore, withdrawal of the objection to claims 1-2 and 8 is respectfully requested

#### **Double-Patenting Rejections**

Claims 1-10 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of co-

pending U.S. Application No. 10/524,192. Applicants respectfully traverse this rejection for the reasons detailed below.

Applicants cannot remedy this rejection at this time and request that this rejection be held in abeyance. This is because none of the co-pending applications has matured into a patent. Should all outstanding issues in the present application be resolved save for the double-patenting rejection, and should none of the co-pending applications have by such time matured into a patent, then the Examiner should allow the instant application and thus any double patenting rejection should attach to the above-noted co-pending applications.

The Applicants, therefore, respectfully request that the rejection to Claims 1-10 under the judicially created doctrine of obviousness-type double patenting be withdrawn.

#### **Rejections under 35 U.S.C. § 112**

Claims 4-5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claims 4-5 are amended in the present amendment for further clarification and consistent with the Examiner's suggestions. The Applicants, therefore, respectfully request that the rejection to Claims 4-5 under 35 U.S.C. § 112, second paragraph, be withdrawn.

#### **Rejections under 35 U.S.C. § 103**

##### ***Kanai in view of Zhang and Fischer***

Claims 1-10 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,386,159 to Kanai et al. (hereinafter "Kanai") in view of U.S. Publication No. 2002/0102673 to Zhang et al. (hereinafter "Zhang") and further in view of U.S.

Patent No. 4,252,901 to Fischer et al. (hereinafter "Fischer"). Applicants respectfully traverse this rejection for the reasons detailed below.

The Office Action stated that Kanai teaches a method of anaerobically producing biogas from an organic material and grinding the organic material/organic matter (see, e.g., Column 1, Line 23 and Column 4, Lines 40-41) to a particle size of < 3 mm (Abstract, Line 3), mixing the organic material with seed sludge, water, or recovered CO<sub>2</sub>-containing Liquid/liquids (See, e.g., Column 3, Lines 27 and 37-40 Column 4, Lines 40-43), and providing a juice-like liquid (slurry); that Kanai additionally teaches charging (feeding) said juice-like liquid into a fermentation tank (feeding) and fermenting (contacting with a biogas-producing bacteria, digesting) said liquid under a CO<sub>2</sub> atmosphere to produce methane (i.e., biogas) (See, e.g., Example 2, Column 5, Lines 20-26); that Kanai also teaches obtaining particulate matter (that is, completely solid/dry matter; Column 2, lines 28-32); adding water to the organic matter and to obtain a preferred concentration of 30-400 g organic material per liter (3-40% by weight of the liquid mixture composition) or 100-300 g/l (10-30% by weight); and adjusting the dry weight of the organic material to "about 1-10% by weight" (Column 3, lines 23-27). Applicants respectfully disagree.

Kanai discloses a method of digesting organic waste matter with a certain ratio of carbon and nitrogen. The organic waste matter is ground to a juice-like liquid and is then mixed with a bacteria-containing sludge in a tank. Then, the digestion is allowed to proceed in the tank without agitation for about 5-7 days. An atmosphere substantially free of oxygen is obtained by charging CO<sub>2</sub>. However, Kanai does not teach or suggest drying the organic matter as is recited in independent claim 1, and in fact teaches away from drying the organic matter. In column 2, lines 17-20, Kanai states that the organic waste matter containing solids is finely ground to an average particle diameter of less than 3 mm to obtain a juice-

**like liquid** having a very low dry solids content, which the Examiner incorrectly interprets as being “completely solid/dry matter”. As Kanai teaches away from drying the organic matter as is recited in independent claim 1, Kanai cannot render obvious this feature of independent claim 1. Zhang and Fischer also do not teach or suggest drying the organic matter as recited in claim 1.

Furthermore, the initial acid fermentation period of Kanai, which can be up to 30 days when the organic material is ground into particles of an average diameter of about 10 mm, is substantially omitted by finely grinding the organic material into particles of an average diameter of less than 3 mm to form a juice-like liquid (see column 5, line 65 – column 6, line 6). However, Kanai does not teach or suggest pelletizing the organic matter as recited in independent claim 1. Applicants respectfully submit that one would not be able to pelletize the juice-like material of Kanai, as opposed to the dried organic matter of claim 1. In fact, one of ordinary skill in the art would have used a wet grinding method for the juice-like material of Kanai in order to obtain a smaller particle size. Also, Zhang and Fischer do not teach or suggest drying and pelletizing the organic matter as recited in claim 1.

Therefore, for all of the above reasons, Applicants respectfully submit that claim 1 has not been rendered obvious by Kanai, Zhang and Fischer either individually or in combination.

Claims 2-10, dependent on independent claim 1, are patentable for the reasons stated above with regards to claim 1 as well as for their own merits.

The Applicants, therefore, respectfully request that the rejection to Claims 1-10 under 35 U.S.C. § 103(a) be withdrawn.

**CONCLUSION**

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

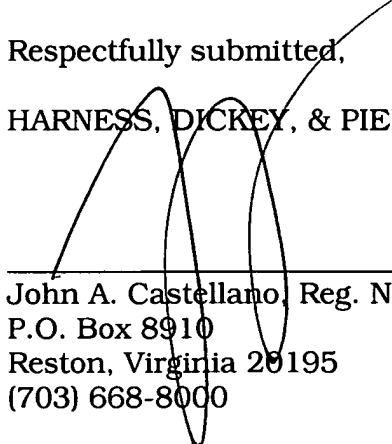
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Erin G. Hoffman, Reg. No. 57,752, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By

  
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Enclosure: PTO 1449 including copies of JP 60-183099 with an English abstract, International Search Report and Office Action dated July 14, 2009 in corresponding U.S. Application No. 10/524,192